THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.18549 OF 2006

Dated 22nd February 2007

Between:

M/s.Siddardha Constructions (Pvt)Ltd.,
Rep. by its Managing Director N.Surender Babu.

…Petitioner

and

The Superintending Engineer,
R&B, Medak Circle, at Sangareddy, Medak District
& others.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.18549 OF 2006

O R D E R:

The 1st respondent issued a tender notice, inviting tenders for the work of improvements, widening and strengthening of road from Sangareddy to Akola, via Nanded, from K.M. 0/0 to 7/0, within the limits of Sangareddy town. The petitioner submitted its tender, and on finding that the offer is the lowest, the 2nd respondent awarded the contract to the petitioner. The agreement was entered into on 20.10.2005. The work was to be completed within six months, i.e. by 19.4.2006.

The petitioner states that the respondents did not hand over the site, on account of their failure to get the trees and other obstructions removed. It is stated that the electrical polls are also not removed. Through its letter, dated 19.5.2006, the petitioner has withdrawn from

the contract, in terms of clause 58 of the agreement. Thereafter, the 2nd respondent addressed letter dated 24.6.2006, terminating the contract and forfeiting the EMD. Petitioner challenges the same, by contending that when the respondents have not even handed over the possession of the site, within the period specified for completion of the work, and it has withdrawn from the contract, there was absolutely no basis for the forfeiture of the EMD.

On behalf of the respondents, a counter affidavit is filed, admitting that the work was entrusted to the petitioner and that the agreement was executed. It is not denied that the work has to be completed within six months. The delay in removal of the trees, on both sides of the road, was said to be on account of the breach committed by the contractor, who was assigned the said work. In para-3 of the counter affidavit, it is stated that the uprooting of trees was completed by 6.5.2006. It was ultimately urged that the petitioner committed breach of conditions and that the EMD was accordingly forfeited, duly terminating the contract.

Heard Smt.Shoba, learned counsel for the petitioner, and learned Government Pleader for Roads and Buildings.

The petitioner emerged as the successful tenderer for the works referred to above, and an agreement was executed on 20.10.2005. 19.4.2006 is stipulated as the date for completion of the work. This, naturally presupposes handing over of the site, soon after the agreement. It was the obligation of the respondents, to clear the electricity and other polls and to uproot the trees on that portion of the road margin, which was needed for expansion. From the inception of the contract, the petitioner insisted on the handing over of the site and complained about the lapses, on the part of the respondents. It is

relevant to refer to the reply of the respondents in the counter affidavit, than to mention the allegations of the petitioner, in this regard. The relevant paragraph of the counter affidavit reads as under:

> "The above work of cutting of trees in Sangareddy town limits was awarded to Sri Mohd.Moulana, R/o.Sangareddy, vide this Office K2AB No.191/2005-06, dt:4.2.2006, with a stipulation to complete the work within (7) days from the date of agreement i.e. 10.2.2006. But the Contractor has failed to complete the work within the agreement period. However, removal and uprooting of trees is completed by 6.5.2006 in all respects with great persuasion by the Department and cooperation by the Police Department, Revenue Department, etc."

From this, it is evident that the site was not available for the petitioner, for commencing the work, even by the time the last date stipulated for the completion of the work, had expired.

Obviously, to overcome the lapse on their part, the respondents insisted on the petitioner, to seek extension of the contract. In its representation, dated 19.5.2006, the petitioner stated several reasons for its inability to continue with the work. It is stated that the cost of material has increased. Another important reason stated by it is that by the time the site was clear, monsoon has set in, and it becomes impossible for him, to undertake tapping of the road, till the next six months. It was in this context that the petitioner has chosen to withdraw from the contract and requested the respondents, to refund the bank guarantee of Rs.3,68,000/-, furnished by it. The petitioner invoked clause 58 of the agreement. The relevant portion of it reads as under:

> ".....The contractor shall have the right to withdraw from the contract and obtain refund of his security deposit if such intimation of handing over the site is delayed more than two months from the date of acceptance of the agreement by competent authority."

The clause enabled the petitioner to withdraw from the contract, if the handing over of the site is delayed by two months. The question of taking any exception for its withdrawing from the contract, on account of the failure of the respondents to hand over the site, even by the last date for completion of the work, does not arise. The 2nd respondent issued the impugned proceedings, cancelling the contract and forfeiting the EMD, attributing the failure on the part of the petitioner, on the ground that the petitioner did not respond to their request to seek extension of time, or to start the work at the earliest. When the site was not available till the impugned proceedings were issued, there does not exist any basis for the respondents, to forfeit the EMD. The loss, on account of the delay or failure in handing over the site, if at all, is suffered by the petitioner, since it is denied the returns out of the contract, and the interest on the EMD. The respondents should have readily agreed for a respectable termination of the contract, without entailing any liability to any of the parties to the contract, as proposed by the petitioner.

Therefore, the writ petition is allowed, and the impugned order is set aside. The respondents are directed to refund the EMD to the petitioner, within four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

22nd February 2007

PAN